1951.

File No. O Pargana Kulkarni Watans/51
Legal Department
A **BRANCH**

Subject:— Opinions under the Bombay Pargana and Kulkarni Watans (Abolition) Act, 1950

P. 23 (21)

File No. O Pargana & Kulkarni Watans/51

Gen. 194

113-A

C O N T E N T S.

Legal Department File No. O. Paragana & Kulkarni Watan/1951.

Sr.No.	R.I./O.No.	Subject.	Pages.
		Opinions under the Bombay Paragana & Kulkarni Watans (Abolition) Act, 1950	
1	15107 21-9-51	Question whether the Act is applicable to certain villages of Hyderabad State have been merged in the Bombay State with effect from 25th Jan., 1950 by virtue of the India and Hyderabad (Exchange of Enclaves) Order, 1950.	1-4
2	15557 29-9-51	Question whether the Act is applicable to certain paragana Watan lands in Dharwar which were resumed by Govt. in 1937 and thereafter regranted to the watandars an act of grace on certain terms and conditions and were treated as a special kind of Inam.	5-6
3	17335 2-11-51	Question whether the action taken prior to the assurance of Govt. to stay the enforcement of the Act need be disturbed.	7-8
4	12257 31-7-51	Questions (1) Whether resumption of watan means resumption by levy of full assessment and not resumption of Watan land. Consequently Sec.3(3) is based on a misconception of law in as much as it provides for the resumption of land (2) Since resumption does not include resumption of Watan land, the question of regrants after resumption as provided in Sec. 4(1) is not legally tenable. (3) If resumption of Watan does not include resumption of watan land, the question of payment of occupancy price as provided in Sec.4(1) is invalid (4) on resumption of watan the full assessment shall be leviable and on the levy of such assessment the watan lands become rayitav lands. Consequently, restrictions about the transferability and partiability of the lands as provided in Sec. 4(2) cannot be justified (5) The Kulkarni Watan lands are unassigned lands and not being for remuneration of the officiators Govt. can at the most levy full assessment on resumption	

1.	2	3	4
5.	16076 10-10-51	Pending proceedings.	25-28
6.	17880 12-11-51	Question whether or to transfer of villages to Bombay State the Kulkarni watans came to be governed by the Bombay Hereditary Offices Act,1874.	29-30
7.	17813 9-11-51	Sanctioning of Special Kulkarni Commutation Cost Allowance.	31-32
8.	18409 19-11-51	Questions (1) Whether there would be any objection to paying to a watandar the amount of allowance due to him immediately before the coming into force of the Act and (2) Whether the expression "Amount of cash allowance due to a holder on the appointed day" in Sec. 6(1) of the Act means the amount of allowance due for the year immediately preceding the appointed day or whether it includes the amount due on amount of arrears in respect of previous years.	33-34
9.	18288 16-11-51	Exercise of powers under Sec.79 of the Watan Act.	35-36
10.	19036 27-11-51	Question whether there would be any objection to issue instructions to the Collectors not to reject the applications on the ground of limitation.	37-38
11.	24088 24-12-51	Questions (1) Whether all pending Kulkarni appointments should continue to be made under the provisions of the Bombay Hereditary Offices Act, 1874, or the existing Kulkarnis should continue to hold charge as village Accountants appointed under S.c. 16 of the L.R. Code though their terms of service have expired and (2) Whether the departmental proceedings at present pending against the Kulkarnis and those which may arise in future should be proceeded with under the B.H.O. Act pending the decision of the High Court or whether they should be dealt with under the B.C.S. Conduct, Discipline & Appeal Rules.	39-40.

BKS. 30/6/ 5c.

30/6

K.S.R. 30/6

Office of the R.L.A.

It appears that by virtue of the India and Hyderabad (Exchange of Enclaves) order, 1950, certain villages of Hyderabad State have been merged in the Bombay State with effect from 25th January 1950. The Collector of Bijapur presumes that the Bombay Pargana and Kulkarni Watans (Abolition) Act,1950, is applicable to these villages. Revenue Department considers that the presumption made by the Collector is not correct. The R.L.A. is requested to advise.

Section 1(2) of the Bombay Pargana and Kulkarni Watans (Abolition) Act,1950, provides that x this Act extends to the whole of the State of Bombay, excluding the merged territories. It is, therefore, apparent that the Act does not apply to the merged territories. The expression "merged territories" as defined in section 3(34) of the General Clauses Act means the territories which by virtue of an order made under section 290A of the Government of India Act, 1935, were immediately before the commencement of the Constitution, being administered as if they formed part of a Governor's Province or as if they were a Chief Commissioner's Province. Section 4A(1) iter alia provides that the definitions in section 3 of the expressions "merged territories, etc., shall apply to all Indian laws "Indian law" as defined in section 3(29) shall mean any Act, Ordinance, Regulation, rule, order, bye-law or other instrument which before the commencement of the Constitution x has the force of law in any Province of India or part thereof, or thereafter has the force of law in any Part A State or Part C State or part hereof, but does not include any Act of Parliament of the United Kingdom or any Order in the Council,

rule or other instrument made under such Act. The Bombay Pargana and Kulkarni Watans (Abolition) Act,1950, is an Indian law within the meaning of section 3(29) and the ~~India~~ India and Hyderabad (Exchange of Enclaves) Order, 1950, whereby the villages from Hyderabad have been merged in the Bombay State, is an Order made by Government under section 290 of the Government of India Act,1935. Consequently, these villages cannot be considered as merged territories within the meaning of section 3(34) of the General Clauses Act,. Prima facie, therefore, the Bombay Pargana and Kulkarni Watans (Abolition) Act,1950, would be applicable to those villages. However, the Act applies to Watans which were governed by the Bombay Hereditary Offices Act, 1874 and were settled or commutted under the said Act. Obviously the service tenures in the said villages were not governed by that Act and could not be held to be watans within the meaning of that Act. Although therefore the villages are not merged territories the Bombay Pargana and Kulkarni Watans (Abolition) Act, 1950 would not apply to service tenure lands in the said villages.

Id/-J.R.D.
20/9
Remembrancer of Legal Affairs.

U.R. to R.D.No. 15107 dated the 21st September 1951

BKS. 29/6/ 4c.

Office of the R.L.A.

Inams of Class V.-A III Dharwar Dist. Bombay Paragana and Kulkarni Watans (Abolition) Act,1950.

It is true that the R.L.A. had held that after regrant of the lands in 1940, the inams so created were not watans but were personal inams of a new character (R.L.A's Opinion No.3779 dt. the 6th May 1942). This view of the R.L.A. has, however, not been accepted by the High Court in Second Appeal No.393 of 1948 (Basappa Hanmappa Boodanavar vs. Shivrao Swamirao Nadgir). The High Court has held therein that even after regrant under a new sanad the lands have remained watan lands with all the implications which that expression contains. This view of the High Court about the construction of the terms of the Sanad will have to be accepted and in the circumstances the lands will have to be deemed to be Watan lands. As the lands are Paragana Watan lands, the Bombay Paragana and Kulkarni Watans (Abolition) Act will be applicable to them.

Id/-J.R.D. 28/9
Remembrancer of Legal Affairs.

U.R. to R.D. No. 15557, dated the 29th September 1951.

BKS. 29/6/ 4c.

Office of the R.L.A.

The Revenue Department's view that action taken prior to the assurance of Government to stay the enforcement of the Act need not be disturbed is correct. The assurance was given on 27-8-1951 and as far as possible the status quo as on that date should be maintained. If, however, any Collector has acted in ignorance of the assurance given by the Advocate General, his action need not be reversed. But if any question arises in future the position will have to be explained.

Id/-J.R.D. 2/11
Remembrancer of Legal Affairs.

U.R. to R.D., No. 17335, dated the 2nd Nov. 1951.

BKS.
29/6/ 4c.

Office of the R.L.A.

The members of the deputation who have represented to Government on behalf of the Karnatak and Maharashtra Watandars for amendment of the Bombay Pargana and Kulkarni Watan Abolition Act (Bom.LX of 1950) have m urged the following points for consideration of Government :

(1) Resumption of watan means resumption by levy of full assessment and not resumption of watan land.

(Consequently, section 3(3) of the Bombay Pargana and Kulkarni Watan Abolition Act is based on a mis-conception of law inasmuch as it provides for the resumptionof land.

(2) Since resumption does not include resumption of watan land, the question of regrant after resumption as provided in section 4(1) is not legally tenable.

(3) If resumption of watan does not include resumption of watan land, the question of payment of occupancy price as provided in section 4(1) is invalid.

(4) On resumption of the watan, the full assessment shall be leviable and on the levy of such assessment, the watan lands become rayitav lands. Consequently, restrictions about the transferability and partibility of the lands as provided in section 4(2) cannot be justified.

(5) The Kulkarni watan lands are unassigned lands and not being for remuneration of the officiators, Government can at the most levy full assessment on resumption.

2. The contentions of the deputationists are mainly based on the ground that, according to the terms of the sanad granted to the Pargana watandars, what is granted by Government is only a partial exemption from payment of the land revenue and consequently Government can resume what has been granted, namely , partial

exemption from assessment of land revenue and thus levy full assessment only without resuming the watan land itself. For this proposition they seem to be relying on the decisions of the Bombay High Court in Ramsomappa v. Secretary of State (39 Bom.L.R.851) and Narsingrao v. Secretary of State (34 Bom.L.R.453) and Government Resolution, Revenue Department No.563/33 dated 10-7-1933. It is true that in Ramsomappa v. Secretary of State (39 Bom.L.R.851) Beaumont C.J. observed that "the sanad does not purport to be a grant of the right of the land. It only provides that the lands and cash allowances shall be continued. That is consistent with the view that what is continued is the right to hold free from full assessment and that right is continued upon the conditions specified which include payment of a fixed judi. If that is the correct interpretation of the first paragraph of the sanad, then, if either of the conditions of the grant, that is, the condition of being faithful to Government and the condition of paying a fixed judy, is broken, the grant would terminate and Government would be entitled to claim full assessment on the lands but any right of occupation which the inamdar possessed apart from the sanad would remain untouched." These observations of the Chief Justice were influenced more by what preceded before the issue of the sanad than by the language of the sanad itself. In that case, the three villages of the watan were attached in 1852 and an inquiry into the rights of the holder of the watan was instituted before the Inam Commission under the provisions of the Bombay Rent Free Estates Act,1852. In 1858 the Inam Commissioner made his report that these three villages were of a jagir tenure and did not belong to the Desai watan and he, therefore, ordered that they should be resumed and assessed as khalsa. There was an appeal to the Government of Bombay against the Inam Commissioner's decision which was later compromised. A settlement was

arrived at between Government and the holder to the effect that on the latter's paying certain fixed dues to Government, he was to retain the watan lands. Thereafter a sanad was issued to him in 1872 in terms of that settlement and this sanad is called the sanad under the Gordon Settlement. The fact that the watan was inquired into and settled under the provisions of the Bombay Rent Free Estates Act, 1852, was largely responsible for the view taken by the Chief Justice in this case. After this decision was given, Government considered the question of filing an appeal to the Privy Council and the Advocate General advised that on other grounds it would not be possible to successfully challenge the decision of the High Court. Consequently, it was not possible to appeal to the Privy Council only on the issue that the finding of the High Court that the resumption of watan means only the resumption by levy of full assessment and hence no appeal was filed to the Privy Council. But the question about the soundness of the view taken by the High Court on the point of resumption was fully considered in the Legal Department.

3. The observations made by the R.L.A. which would dispel all doubts on the point can better be quoted :

"Both C.J. and Wadia J. have fallen into an error when they hold that the sanad in in this case is to be interpreted in accordance with the provisions of Act XI of 1852. It is admitted in the present case that the commutation settlement was what is known as the Gorden Settlement. These settlements were validated by section 15 clauses (2) and (3) of the Bombay Hereditary Offices Act,1874. Act XI of 1852 had no application to lands held for services (see Rule 10 of Schedule B to Act XI of 1852).... The proceedings of the Inam Commission under Act XI of 1852 had, therefore, no connection with the ultimate decision of Government regarding the character of the tenure. It is, therefore, wrong to construe a sanad

validated under Bombay Act III of 1874 in the light of the ~~previous~~ provisions of Act XI of 1852. Wadia J.'s observations that the sanad was granted under the summary settlement under Act XI of 1852 is not correct. It is true that in the case of inams, the declared policy of Government has been that resumption should be by way of the levy of full assessment and not by way of dispossession (see Government Circular No.9442 dated 27th May 1854, quoted in Phadnis' Saranjams and Inams, p.88). This circular has been judicially recognised in the case of inams only (see 1 Bom.H.C.R.22 I.L.R. 9 Bom.419). But the privy Council has refused to extend the provisions of this circular to any other tenure. Thus in the case of saranjams the Privy Council held that if the grant was of the soil, the resumption would be dispossession including all rights and benefits which the grantee has secured by nature of the grant. (see Secretary of State v. Laxmibai I.L.R.47 Bom.337, Secretary of State v. Girjabai I.L.R.49 Bom.126). In the case of service tenures like watans no distinction can be drawn between the grant of the soil or the grant of the revenue. The grant is ordinarily of the soil (see Amrit v. Hari I.L.R. 44 Bom.275). If that is so, the resumption in the case of watans should be by dispossession and not by the levy of full assessment unless it is clearly proved that the remuneration for the services was a share of revenue only. Thus, when a watan goes out in the possession of a stranger, Government are empowered to dispossess the x trespasser (see section 12 of the Bombay Hereditary Officers Act,1874). The Chief Justice and Wadia J. hold that the only circumstances in which Government could resume the watan under the terms of the sanad would be on breach by the holders of the watan of either of the two conditions referred to in the second paragraph, i.e. if they ~~xxix~~ were disloyal to Government or if they failed to pay the fixed yearly dues. They refer to clause 1 of the sanad

and hold that in the case of the breach of a condition, Government merely stipulated the levy of full assessment and that the said clause is not a clause of re-entry. The Chief Justice observes :

> 'Stating the clause in its converse form, it comes to no more than this : That whilst there is no requisite heir to the watandar, Government are entitled to insist on service or further assessment."

This would not be correct. Services were alreadycommuted and there could not be any stipulation for demand of services at any time in future. If there was a failure of heirs, it is wrong to hold that the lands should remain in the possession of persons who were not the heirs of the original grantee.... The existence of the male heir to the watan is a condition which governs the continuance of the grant as a whole. It is wrong to hold that on the failure of male heir the grant does not lapse, but the lands become subject to full assessment only. The interpretation put by the High Court on the terms of the sanad is, in my opinion, erroneous and is inconsistent with the interpretation so long put by Government."

4. The Advocate General agreed with the above view. In his opinion No.27 dated 19th May 1937 the Advocate General observed :

" Although the conditions of resumption and the question as to what actual resumption involves are points which are capable of considerable argument and on which the decision of the Privy Council would be of undoubted value, the facts of the present case appear to be such that there is little chance of these points actually arising for decision. So long as there are male heirs to the watan within the limits of the watandar's family, I think it is clear that no question of resumption can arise."

It is clear from the above that the decision of the High Court regarding the resumption as meaning the levy of full assessment was an obiter dictum and was not actually necessary for the decision of the appeal. The

finding of the High Court on facts that there was no failure of male heirs in the watandar's family was sufficient for the decision of the appeal. As this finding on facts could not be upset in a further appeal, Government did not appeal. But the decision of the High Court on the questions of law was erroneous and was never accepted by Government. The decision in this case cannot be held as deciding that in the case of watan's resumption can only be bythe levy of full assessment. Such a view would be opposed to the decision in Amrit v. Hari quoted above and would not also find support in the decisions of the Privy Council in Hebli and Umaben Saranjam cases cited above. The erroneous decision of the High Court can be set aright by two ways :- (1) by a further appeal to the Privy Council and (2) by a legislative enactment. In view of the facts of the case in Girsagar watan case the former course could not be undertaken as the evidence on facts was not considered sufficient for the purpose. The second course therefore had to be taken and the Legislature has made the point clear in the present Pargana and Kulkarni Watan Abolition Act.

5. The Pargana Watans are settled under Gordon Settlement. One of the terms of reference to the Committee for such settlement, as stated in the Government Resolution dated 7th March 1863, is :

> "The terms which Mr.Gordon should be authorised to offer to the Hereditary District Officers will vary according to the character and past history of the watan. In some Districts they might be very similar to those on which Summary Settlement of the Inams in the Deccan has been effected, that is to say, he might offer the continuance of their present <u>emoluments in land and cash</u> to all who may agree to abandon all but a nominal right to serve on the payment of a chauthai, or deduction of one-fourth."

The Gordon Settlement sanad provides for continuance of the lands and cash allowances on payment by the holder of the judi fixed thereunder and on fulfilment of the other conditions specified therein. The continuance of the lands clearly indicates that what was granted for the services

was the land and the cash allowances and in consideration of the commutation of services, the holder only agreed to pay the judi to Government. So what was granted by Government was not the exemption fm from payment of full assessment but the land and the cash allowances which were continued by the sanad. Evidently, therefore, resumption would mean not the resumption by levy of full assessment but resumption of lands and cash allowances attached to the watan.

6. As stated above, the decision in Ramsomappa v. Secretary of State cannot be considered as an authority for the proposition that resumption of watan settled under the Gordon Settlement would be resumption by levy of full assessment and not resumption of land itself. The second decision relied on by the deputationists is Narsingrao v. Secretary of State (34 Bom.L.R.p.453). In that case the question as to what constitutes resumption was not inissue nor was it raised for ~~discussion~~ discussion. The point raised in that case was whether the holder of the watan contravened the condition of the sanad regarding his being a faithful subject of the British Government by joining the Indian National Congress. Consequently, that decision ~~x~~ does not support the deputationists.

7. It is true that in Government Resolution, Revenue Department No.563/33 dated the 10th July 1933 Government ordered resumption of Pargana watan by levy of full assessment. The question whether Government could resume the watan land itself instead of resuming by levy of full assessment was not considered in that Government Resolution. It is open to Government to resume the land itself or be content with resuming by levy of full assessment. In that particular case, Government resumed by levy of full assessment and consequently, that would not be an authority for the general proposition that Government cannot resume the watan land itself.

8. If it is once conceded that Government had a right to resume the watan land itself, the other contentions raised by the deputationists would hardly be tenable. If Government resumes the land, on such resumption it vests in Government and it is open to Government to regrant it with or without any conditions. The payment of the occupancy price equal to twelve or six times as the case may be as provided in section 4(1) can be imposed as a condition subject to which the lands thus resumed can be regrated. It is also open to Government while regranting the land to impose restrictions as provided in section 4(2)

9. So far as the Kulkarni watan lands are concerned, no valid distinction canbe made between the Kulkarni watan lands and the Pargana watan lands so far as resumption and regrant as provided in the Act are concerned. In the circumstances, the contentions of the deputationists seem to have been based on a mis-conception of law and they may be informed that resumption of the Pargana watan land would extend to the resumption of the land itself and not limited to resumption by levy of full assessment. If in any case any watandar is able to prove that his watan does not consist of land but of land revenue only, it is clear that the provision has been made in section 6(2) of the Act to compensate him adequately .

Id/-J.R.D. 31/7
Remembrancer of Legal Affairs.

U.R. to R.D.No. 12257 ,dated the & 31st July, 1951.

BKS. 29/6/ 4c.

OFFICE OF THE R.L.A.

Pending proceedings

Bombay Paragana and Kulkarni Watans (Abolition) Act, 1950.

In Government Memorandum No.2451/49/54917-M, dated the 14th June 1951 Government issued instructions that ".... .... under the Bombay Paragana and Kulkarni Watans Abolition Act the provisions of the Watan Act in so far as they relate to the paragana and Kulkarni watans have been repealed, and as such, Collector has ceased to have anyjurisdiction to entertain any appeals under the provisions of the Watan Act, whether filed before or after 1st May 1951."

The Collector of South Satara considers that these instructions are contrary to the provisions of section 14(3)(c) of the Bombay Paragana and Kulkarni Watans (Abolition) Act, 1950, and that the Collectors would be justified in entertaining appeals in respect of the proceedings already continuing prior to 1st May 1951 as otherwise it would be tantamount to refusing the parties' right of appeal in respect of such proceedings started or pending before the introduction of the Act. The Revenue Department considers that the word "Court" in section 14(3)(c) means only civil courts and not Revenue Courts. R.D. further states that the R.L.A. has advised in his opinion dated the 22nd May 1951 that after the coming into force of the Bombay Paragana and Kulkarni Watans (Abolition) Act Government would have no power to take action under section 9 of the Watan Act to evict any alienee; and that in view of this opinion of the R.L.A. the orders issue in the aforesaid Government Memorandum are correct. The R.L.A. is, however, requested to advise.

2. By section 14(1) of the Bombay Paragana and Kulkarni Watans (Abolition) Act, 1950, the enactments in Schedule I to the Act cease to apply to Paragana and Kulkarni Watans. This section is a repealing section and ordinarily the effect of repeal would have been as provided for in sectio 7 of the Bombay General Clauses Act, 1904 which saves all

rights, privileges etc. and also legal proceedings and the remedies in respect of those rights and privileges. The Bombay Paragana and Kulkarni Watans (Abolition) Act, however, makes special provisions. Sub-section (3) of section 14 of that Act enacts that : "Nothing in sub-sections (1) and (2) shall be deemed to affect ----

(a) any obligation or liability already incurred before the coming into force of this Act;

(b) any proceedings in respect of such obligation or liability;

(c) anything done in the course of such proceeding in any court on the aforesaid date, and any such proceeding may be continued, as if this Act had not been passed."

This sub-section saves only the <u>obligations and liabilities</u> and the proceedings in respect of such obligations and liabilities and anything done in the course of such proceedings in <u>any</u> court on the aforesaid date and therefore only such proceedings i.e. proceedings in court can be continued after the repeal of the Enactments mentioned. These special provisions, it appears, would exclude the operation of section 7 of the General Clauses Act, 1904 and in the circumstances it would not be open to the Collectors to exercise their powers under the repealed enatments except to the extent specified. All other proceedings must therefore abate (Cf. Maxwell on Interpretation of Statutes, 9th Edn. pp. 404-405). The view taken by the Collector of South Satara is not correct.

Id/-J.R.D. 10/10
Remembrancer of Legal Affairs.

U.R. to R.D.No. 16076 , dated the 10th October 1951.

BKS. 29/6/ 4c.

Office of the R.L.A.

It would be seen from the concluding portion of R. L. A's opinion No. 15107, dated the 21st September 1951, that though the Hyderabad enclaves could not be considered to fall within the expression "merged territories" in section 1(2) of the Bombay Paragana and Kulkarni Watans (Abolition) Act, 1950, the service tenures in those villages not having been settled or commuted under the Bombay Hereditary Offices Act, 1874, could not be considered to be Watans within the meaning of the former Act which would not therefore apply to Kulkarni tenures in the Hyderabad enclaves. The question raised by the Collector viz., whether on the transfer of the villages to Bombay State the Kulkarni Watans came to be governed by the Bombay Hereditary Offices Act, 1874, does not therefore, appear to arise; and there is no need of reconsidering the opinion already expressed; nor would the question of amending the Bombay Paragana and Kulkarni Watans (Abolition) Act arise at this stage.

Id/-J.R.D. 10/11
Remembrancer of Legal Affairs.

U.R. to R.D. No. 17880, dated the 12th November 1951.

BKS. 29/6/ 4c.

OFFICE OF THE R.L.A.

Sanctioning of Special Kulkarni Commutation Cash Allowance.

Bombay Paragana and Kulkarni Watans (Abolition) Act, 1950.

The proposal in the present case is to sanction Special Kulkarni Commutation Cash Allowance to certain Watandar Kulkarnis of the villages of Ukkadgaon, Sarolabaddi and Dashmigavan in the Ahmednagar taluka. The sanction asked for is under section 15 read with section 74 of the Bombay Hereditary Offices Act, 1874. That Act, however, is repealed by section 14 of the Bombay Paragana and Kulkarni Watans (Abolition) Act, 1950 and it would not be competent to Government exercise its powers under the repealed enactment. It is true that sub-section (3) of section 14 of the Act saves pending proceedings but as pointed out in R.L.A's opinion No.16076, dated the 10th October 1951, the proceedings saved are only those in respect of any obligation or liability already incurred before the coming into force of the Act and pending in court on the aforesaid date. In the present case the proceedings cannot be said to be pending in court, nor are they in respect of any liability or obligation already incurred. In the circumstances, they are not saved and it would not be competent to Government to accord the sanction asked for by the Settlement Commissioner and the Director of Land Records.

Id/-J.R.D. 8/11
Remembrancer of Legal Affairs.

U.R. to R.D. No. 17813, dated the 9th November 1951.
BKS. 29/6/ 4c.

22366A of 27.x.1951.

Submitted with reference to R.D.note at pp. 3-4 ante. The R.L.A. is requested to advise on the points raised in paras 2 and 3 of the letter from the Collector of Ratnagiri at p. 1 ante.

2. Section 3 of the Bombay Paragana and Kulkarni Watans (Abolition) Act, 1950, abolished all Paragana and Kulkarni Watans with effect from the date of the coming into force of the Act which was 1st May 1951. The first question raised by the Collector of Ratnagiri is whether there would be any objection to paying to a watandar the amount of allowance due to him on 30th April 1951 i.e. due to him immediately before the coming into force of the Act. The Collector presumes that as the amount pertains to a period before the coming into force of the Paragana and Kulkarni Watans (Abolition) Act, there would be no objection to making the payment. The presumption made by the Collector of Ratnagiri is correct; and there would be no objection to paying amounts of allowances due to watandars before the coming into force of the Bombay Paragana and Kulkarni Watans (Abolition) Act, 1950.

3. The next question is whether the expression "amount of cash allowance due to a holder on the appointed day" in section 6(1) of the Act means the amount of allowance due for the year immediately preceding the appointed day or whether it includes the amount due on account of arrears in respect of previous years. Section 6(1) lays down the rule for calculating the amount of compensation payable to a watandar in respect of whose watan a commutation settlement has been effected. The amount of compensation shall be a sum equal to seven times the amount of cash allowance

due to a holder on the appointed day. If the amount due on such day is held to include also the arrears due to a watandar on that day there would be no uniformity in the sum fixed as compensation. Obviously therefore the intention appears to be that the amount should be calculated on the basis of the amount of cash allowance due to a watandar on the appointed day in respect of the year preceding that day.

Id/-
10/11/51

D.S. (Opinion) Reply may be :-

Seen & returned.

The view taken by R.D. on note the points raised by the Collr. of Ratnagiri is correct

Id/-R.T.K. 16/11

R.L.A. Id/-J.R.D 16/11

U.R. to R.D.No. 18409, dated 19-11-1951.

BKS. 29/6/ 4c.

Office of the R.L.A.

Exercise of powers under Section 79. of the Watan Act.

Bombay Paragana and Kulkarni Watans (Abolition) Act, 1950.

It would not be possible for Government to exercise its powers under section 79 of the Watan Act in the present case in view of the repeal of the said Act by the Bombay Paragana and Kulkarni Watans (Abolition) Act, 1950. It is true that sub-section (3) of section 14 saves pending proceedings but as pointed out by the R.L.A. in his opinion No. 16076 dated the 10th October 1951, the proceedings saved are only those in respect of any obligation or liability already incurred before the coming into force of the Act and pending in court on the aforesaid date. The present proceedings are neither in respect of any liability or obligation nor can they be said to be pending in court. In the circumstances, it would not be competent for Government to exercise its powers under section 79 and to revised the orders passed by the Assistant Collector.

Id/-J.R.D. 15/11
Remembrancer of Legal Affairs.

U.R. to R.D., No. 18288, dated the 16th November 1951.

BKS.
30/6/ 4c.

Office of the R.L.A.

There would be no objection to issue the proposed instructions but as advised by the Remembrancer of Legal Affairs in his opinion No.15003, dated the 20th September 1951, provision for extension of time would have to be made by a legislative measure to regularise the executive action.

Id/-J.R.D. 27/11
Remembrancer of Legal Affairs.

U.R. to R.D. No. 19036, dated the 27th November 1951.

BKS. 29/6/ 4c.

Office of the R.L.A.

The Collector of Dharwar has requested Government to issue instructions on the points raised in his letter at page 1 ante and it is proposed to issue instructions as at page 5. The R.L.A. is requested to advise before the Collector is informed as proposed.

The petitions filed in the High Court challenging the validity of the Bombay Paragana and Kulkarni Watans (Abolition) Act, 1950, have now been decided and the stay order has been vacated. The first question raised by the Collector of Dharwar, therefore, does not survive.

3. As regards the second question, viz., departmental proceedings, it is apparent that these proceedings cannot be continued on repeal of the Watan Act, It is true that sub-section (3) of Section 14 of the Bombay Paragana and Kulkarni Watans (Abolition) Act, 1950, saves pending proceedings but as pointed out by the R.L.A. in his opinion No. 16076, dated the 10th October 1951, the proceedings saved are only those in respect of any obligation or liability already are only those in respect of any obligation or liability already incurred and pending in Court on the date of coming into force of the Act (vide also R.L.A's opinions No. 17813, dated 9th November 1951 and No. 18288, dated 16th November 1951). The departmental proceedings pending before Revenue Officers cannot be said to be pending in a Court and consequently they would abate on repeal of the Act.

Id/- R. J.R.D. 24/12
Remembrancer of Legal Affairs.

U.R. to R.D. No. 20488 dated, 24th December 1951.

BKS. 30/6
4c.